

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

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EDIZONE, L.C.,  
Plaintiff,

vs.

CLOUD NINE, et al.,  
Defendants.

MEMORANDUM DECISION AND  
ORDER DENYING WITHOUT  
PREJUDICE DEFENDANTS'  
MOTION IN LIMINE #6

Case No. 1:04-CV-117 TS

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CLOUD NINE, et al.,  
Counterclaim-Plaintiffs and  
Third-Party Plaintiffs,

vs.

EDIZONE, L.C.,  
Counterclaim-Defendant,  
and  
TERRY PEARCE, et al.,  
Third-Party Defendants.

This matter comes before the Court on the CrossGel Defendants' Motion in Limine #6 to Exclude References to Experimentation. In their Motion, Defendants seek to preclude references to experimentation by Plaintiff not directly tied to the '111 Patent and the '527 Patent.

Federal Rule of Evidence 402 provides that "[e]vidence which is not relevant is not admissible." Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."<sup>1</sup> Of course, "[t]he standard is not stringent; it is aimed at each 'brick' of evidence potentially making a wall and not every witness 'mak[ing] a home run.'"<sup>2</sup>

Fed.R.Evid. 403 excludes otherwise relevant evidence

if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or delay, waste of time, or needless presentation of cumulative evidence.

The Court is unwilling to make a broad ruling that any discussion of experimentation should be excluded, especially in light of Plaintiff's trade secrets claim. Thus, the Court will deny Defendants' Motion, but this ruling will not prevent Defendants from making appropriate objections during trial.

It is therefore

ORDERED that Defendants' Motion in Limine #6 to Exclude References to Experimentation (Docket No. 816) is DENIED WITHOUT PREJUDICE.

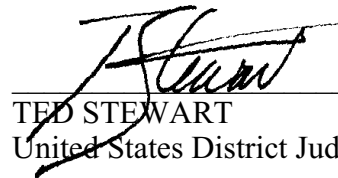
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<sup>1</sup>Fed.R.Evid. 401.

<sup>2</sup>*United States v. Yazzie*, 188 F.3d 1178, 1189 (10th Cir. 1999) (quoting Fed.R.Evid. 401 advisory committee's note).

DATED May 22, 2008.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART  
United States District Judge